REGISTERED No.4631 M.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. III] Trivandrum, Wednesday, 7th May 1958 [No 68

CONTENTS

Election Department
NOTIFICATION

No. 2079/58/EL1.

Dated, *Trivandrum, 7th May 1958.*

In connection with the ensuing bye-election in the Devicolam Legislative Assembly constituency, Government are pleased to declare Friday the 16th May, 1958 as a public holiday for the taluks of Devicolam, Udumbanchola and Peermade.

By order of the Governor,
P. NARAYANASWAMI,
Additional Secretary and
Chief Electoral Officer.

ELECTION COMMISSION, INDIA
NEW DELHI.

Dated the 1st May 1958/Vaisakha 11,1880 (Saka).

NOTIFICATION

No. 82/242/57/10954.—In continuation of Election Commission's notification No 82/242/57/12796 dated the 2nd December 1957, published in the Kerala Gazette Extraordinary (Vol. II, No. 127) dated the 5th December 1957, under section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the Judgment of the High Court of Kerala, Ernakulam delivered on the 7th March 1958, on the appeal filed by Shri Pottekat Sukumaran, son of Krishnan, C/o Mathrubhoomi Office, Kozhikode (Kerala State), against the order dated the 11th November 1957, of the Election Tribunal, Ernakulam in Election Petition No. 242 of 1957.

By order,
DIN DAYAL,
Under Secretary to the
Election Commission.

In the High Court of Kerala, Ernakulam.

FRIDAY THE 7TH DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND FIFTY-EIGHT.

Present:

THE HONOURABLE MR. JUSTICE G. KUMARA PILLAI

And

THE HONOURABLE MR. JUSTICE M. S. MENON

ELECTION APPEAL No. 2/1957

Election Petition No. 242 of 1957 of the Election Tribunal, Ernakulam.

Pottakkat Sukumaran, son of Krishnan, C/o Mathrubhoomi Office, Kozhikode-1, Kerala State. — *Appellant—Petitioner.*

By Advocates M/s. P. Govinda Menon, K. Velayudhan Nair and P. K. Krishnankutty Menon.

Joseph Mundasseri, son of Kunjuvareed, Kizhakkupattukara, Trichur. (Present Address — Joseph Mundasseri, Minister, Trivandrum). — *Respondent—Respondent.*

By Advocates M/s. V. Sankara Menon and N. Gangadhara Menon.

This Appeal having been finally heard on 21-2-1958, the Court on 7-3-1958 delivered the following:

JUDGMENT.

This is an appeal by the petitioner in Election Petition No. 242 of 1957. His petition to set aside the election of the respondent to the Kerala State Assembly from the Manalur Constituency (No. 66) was dismissed by the Election Tribunal, Ernakulam, by its order dated 11th November 1957. It is the correctness of that order that is challenged by this appeal under section 116A of the Representation of the People Act, 1951.

2. There were three contesting candidates, the petitioner (Congress), the respondent (Communist) and one Govindankutty Nair (P. S. P.) who has not been impleaded either in the petition or in this appeal before us. The polling was on the 11th March 1957. The respondent secured 23,350 votes, the petitioner, 21,355 votes and Govindankutty Nair, 2,486 votes. The result of the election was declared on the 14th March 1957.

3. Section 117 of the Representation of the People Act, 1951, provides:

> "The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the cost of the petition";

Section 85 of the Act:

> "If the provisions of section 81 or section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition:
>
> Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard": and

Section 90 (3):

> "The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under section 85".

According to the respondent the deposit in this case was not proper and the first issue framed for trial was:

> "Has the petitioner complied with the provisions of Section 117 of the Representation of the People Act of 1951? If not, is the petition maintainable?".

4. The Tribunal dealt with the issue in paragraphs 7 to 14 of its order, negatived the contention of the respondent, and held that the petition was maintainable. The Tribunal summed up the case as follows :—

> "The petitioner has made a deposit in a Government Treasury but the receipt produced by him does not indicate that the amount was paid in favour of the Secretary to the Election Commission. That was the receipt which he forwarded with his petition to the Election Commission in New Delhi. Subsequently, after the hearing of the petition commenced before this Tribunal, he paid another sum of Rs. 1000 in strict compliance with the provisions of Section 117, by stating that it was made in favour of the Secretary to the Election Commission. This subsequent deposit made after the lapse of the prescribed period cannot save the situation for him, if there was a fatal defect in the original deposit made by him. The question, therefore, is whether there was such a fatal defect in the original deposit as to attract the provisions of section 90 (3) of the Act that 'the Tribunal shall dismiss an Election Petition which does not comply with the provisions of Section 117, notwithstanding that it has not been dismissed by the Election Commission under section 85'. In the present case, the Election Commission did not exercise the power vested in it by section 85 and did not dismiss the election petition. but posted it before this Tribunal remarking that it is left to the Tribunal to decide whether this should be treated as a fatal defect or one that can be cured by a fresh deposit or otherwise so as to secure the right of the respondent to have the costs, if any, eventually awarded to him being safeguarded. The contention of the respondent's learned counsel is that the defect is fatal and that consequently the petition should be dismissed under section 90 (3)". (paragraph 7)

The correctness of the Tribunal's statement regarding the second deposit:

> "This subsequent deposit made after the lapse of the prescribed period cannot save the situation for him (the petitioner), if there was a fatal defect in the original deposit made by him"

is not challenged by the appellant.

5. The relevant portion of Exhibit A, the chalan dated 22-4-1957 is as follows:—

By whom paid.	*On what account.*	*Amount.* Rs. As. P.	*Monthly consecutive number assigned to credit in the Dept. Book.* No.	Month.
Sukumaran Pottekkat, The Mathrubhumi, Kozhikode, Kerala State	Central (Civil) Section P. Deposits and advances—Part II Deposits not bearing interest (G) Other deposits accounts. Deposit for election petition	1000		
	Total	1000		

It is not disputed that the Head of account specified in the chalan is correct. The only question for consideration is whether the absence of other words indicating that the deposit was "in favour of the Secretary to the Election Commission" is fatal to the maintainability of the petition or not.

6. A similar contention was urged without success before the Election Tribunal, Madurai, (Mr. P. K. Subramonia Iyer) in Election Petition No. 147 of 1957. The correctness of the Tribunal's decision was canvassed before the High Court of Madras. That Court dealt with the matter as follows in (1958) 1 M. L. J. 139 (156):—

> "We have already set out the terms of section 117 and the question for our consideration is whether the Tribunal was in error in holding that there had been a compliance with section 117.
>
> Mr. Nambiar learned counsel who appeared for the petitioner strongly urged that the terms of section 85 and section 90 (3) afforded a clear indication that the requirements of section 117 were mandatory. His further argument was that, when once a provision was mandatory it had to be literally complied with, and that there was no question of the Court having power to treat a substantial performance as a compliance with it. In

this connection he stressed the fact that section 117 required and insisted on four matters: (1) The sum deposited should be Rs. 1,000. The deposit of a lesser sum, he urged, even though it fell short of the named amount by a trifle would not be any compliance with section 117, and that where there was such a deficit it could not be made up after the period for the filing of an election petition under section 81 had elapsed. (2) The deposit must be in a Government Treasury or Reserve Bank. This condition also was essential, and if the deposit, for instance, was made in a banking institution other than the Reserve Bank, the petitioner could not claim to have complied with the provisions of the section and cannot be permitted to say when the defect was pointed out, that he would have the amount transferred to the Reserve Bank. (3) The receipt must show the deposit in favour of the Secretary to the Election Commission and the head of account should be as security for costs of the petition. He said that though the second part of it was satisfied by the receipt in the present case, it was not in favour of the Secretary to the Commission and therefore was not in compliance with the statute. (4) It was not sufficient if the receipt was obtained by the petitioner and be kept with himself; it must be enclosed with the petition and must reach the Commission within the time specified in section 81. Learned counsel urged that there was no distinction between these four requirements, and that a non-compliance in respect of any one in the sense of there not being a literal complinace with it, was fatal to the maintainability of the petition.

In this connection it was pressed upon us that the requirement that the receipt should be in favour of the Secretary to the Election Commission was not inconsequential, and that the statute had made provision in those exact terms, in particular cases, while other language had been used for different situations. Thus it was pointed out that under sections 118 and 119 on the one hand as contrasted with sections 117 and 119-A on the other, the person in whose favour the deposit was to be made was not indicated though the duty to make the deposit arose out of an order of the Tribunal. It was therefore urged that when under sections 117 and 119-A the deposit was required to be in the name of the Secretary, this should be held to be a mandatory statutory requirement, the non-compliance with which entitled the dismissal of the petition under sections 85 and 90 (3). Our attention was drawn to (1885) L. R. 15 Q. B. D. 273 and (1866) L. R. 1 C. P. 596 as authorities for the position that non-compliance with the provisions of the Statute was, unless expressly provided otherwise, fatal in election law. We do not consider these authorities of any relevance for the decision of the

present question and therefore desist from examining their facts or the principles on which they rest. Learned counsel also relied on a decision of the House of Lords in (1888) L. R. 13 A. C. 506, particularly on a passage in the speech of Lord Mac Naughton at pages 519-520. The House was then dealing with the validity of a bill of sale which had departed from the form prescribed therefor by section 9 of the Bills of Sale Amendment Act, 1882. This amending Act enacted :

> 'A bill of sale made or given by way of security for the payment of money by the grantor thereof shall be void, unless made in accordance with the form in the schedule to this Act annexed.'

The document before the Court was not exactly in that form. The question which was debated in the passage relied on was the degree of departure which would render it not 'in accordance with the form'. Lord Mac Naughton said :

> 'This section seems to me to deal with form and form only. So purely is it, I venture to think, a question of form that I should be inclined to doubt whether a bill of sale would not be void which omitted the provisio referring to section 7 though I cannot see that the omission would alter the legal effect of the document in the slightest degree or mislead anybody. The words of the Act are 'in accordance with the form' not 'in the form'. But then comes the question, when is an instrument which purports to be a bill of sale not in accordance with the statutory form? Possibly when it departs from the statutory form in anything which is not merely a matter of verbal difference. Certainly I should say when it departs from the statutory form in anything which is characteristic of that form'.

Mr. Nambiar urged that in the present case the reference to the Secretary to the Election Commission was within the words quoted above 'characteristic of the form' and that the omission of that name from the receipt was a non-compliance with the terms of section 117, drawing to the petition the penalty of dismissal provided for in section 85 and section 90(3) of the Act.

We are wholly unable to accept the contention, that the informality complained of, renders the deposit one, not in accordance with the terms of section 117. Even the strict compliance with the terms of the section which is all that the mandatory nature of the provision would call for would not justify the construction urged by learned counsel for the petitioner. Take for ins ance the case of the amount of deposit. Section 117 requires that this sum should be Rs. 1000. A deposit of the lesser sum would certainly not be a compliance with this provision. But suppose the petitioner deposited

a sum in excess of Rs. 1,000, say Rs. 1,500. Could it be said that this was a non-compliance with the terms of section 117 which required a petitioner to deposit Rs. 1,000? A literal construction of the section might mean that it required a deposit of Rs. 1,000, neither more or less, and that a deposit in excess suffered from the same infirmity of departure from form, as the deposit of a lesser sum. We are satisfied that strict compliance of the section does not require the sort of literal compliance which the above instance illustrates. Similarly learned counsel cannot contend that clerical errors in the receipt, say errors committed in spelling, would render in the receipt one not in conformity with the section. In our opinion the purpose which the deposit is intended to fulfil is a legitimate matter which can and ought to be taken into account in approaching the problem as to whether there has been a compliance with section 117 or not This purpose is to be found in section 121, where if payment of costs is ordered by the Tribunal, the amount in deposit is made available by the Election Commission to satisfy such order. Approached from this aspect the question we put to ourselves is, was the amount deposited in such form that it is available to the Commission for the payment of costs to the successful party in case an order to that effect was passed by the Tribunal. In the present case it was not in dispute that notwithstanding the absence of the name of the Secretary to the Commission in the receipt, the amount, having regard to the other entries in the receipt, was treated as a credit to the Election Commission and was available fo the respondent in the election petition which Kunju Thevar has filed. In these circumstances we hold that the Tribunal was right in holding that the terms of section 117 were complied with and in dismissing the application No. 2 of 1957".

7. According to counsel for the respondent the word "shall" occurring in section 90 (3) of the Representation of the People Act, 1951, makes the dismissal of the petition obligatory in the absence of the strict compliance with the provisions of the three sections enumerated therein, one of which is section 117, and the said contention derives support from the fact that the word used was "may" and not "shall" in the corresponding provision in the Representation of the People Act, 1951, as it stood before the amendments effected by Act 27 of 1956:

> "Notwithstanding anything contained in section 85, the tribunal may dismiss an election petition which does not comply with the provisions of section 81, section 83 or section 117". (Section 90 (4).

We see no reason to differ from the conclusion reached by the Election Tribunals of Madurai and Ernakulam and the High Court of Madras on the subject, and hold that issue No. 1 has been correctly decided.

8. Section 100 of the Representation of the People Act, 1951, details the grounds for declaring an election to be void. There are two sub-sections to that section, and sub-section (1) is subject to the provisions of sub-section (2). According to sub-section (1) (b) of that section if the Tribunal is of opinion:

> "that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent",

the Tribunal shall declare the election of the returned candidate to be void, and the contention of the appellant is that the Tribunal was wrong in refusing such a declaration in this case.

9. Section 123 of the Representation of the People Act, 1951, details the practices which shall be deemed to be corrupt practices for the purposes of the Act. Clause (4) of that section relates to the publication of false and defamatory statements and is in the following terms:

> "The publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election".

The allegation in the petition is that the respondent has been guilty of a corrupt practice coming within the ambit of section 123 (4) of the Representation of the People Act, 1951.

10. Exhibit G is an issue of the Navajivan, dated the 9th March 1957, a newspaper of which the respondent was the editor at the relevant time. It contains the report of a speech delivered by R. W. 2 at the final rally held in support of the respondent's candicature on the 7th March 1957.

11. R. W. 2 is known as S. K. Pottekkat and the petitioner as Sukumaran Pottekkat. Both of them are familiar figures in Malayalam 'Literature,' the former as disclosed by the evidence being the more familiar of the two. The portion of the report on which reliance is placed reads as follows:

> "ഞാൻ എസ്. കെ. പൊററക്കാട്ട് എന്നാണ് അറിയപ്പെടുന്നത്. മുഴുവൻ പേർ ശങ്കരൻ കുഞ്ഞിരാമൻ പൊററക്കാട്ട് എന്നാണ്. ഞാൻ കുറേറെ എഴുതാറുണ്ട്. ജനങ്ങളും അതൊക്കെ വായിക്കാറുണ്ട്. അവരെന്നെ ഇഷ്ടപ്പെടുന്നു. ഇവിടെ കോൺഗ്രസ്സ് ടിക്കററിൽ തിരഞ്ഞെടുപ്പിന് നില്ക്കുന്ന ശ്രീ. സുകുമാരൻ പൊറെറക്കാട്ട് എന്റെ മേൽവിലാസം ഉപയോഗപ്പെടുത്തുന്നു എന്നറിവാനിടയായി. അതു കാപട്യമാണ്. സുകുമാരന് കോഴിക്കോട് മാതൃഭൂമിയാഫീസിൽ ഉദ്യോഗമുണ്ട്. എന്റെ വീട് കോഴിക്കോട്ടാണ്. ഞങ്ങൾ തമ്മിൽ സ്നേഹത്തിലുമാണ്. പരിചയപ്പെട്ടതു മുതൽക്കേ കാപട്യം കാണിച്ചു വന്നിട്ടുണ്ട്, ശ്രീ സുകുമാരൻ. വിവാഹം ആർക്കും വലുതാണല്ലോ—എന്റെ വിവാഹകാര്യത്തിൽ പോലും അദ്ദേഹം എന്റെ ഭാര്യവീട്ടുകാരുടെ മുമ്പാകെ താനാണ് പൊററക്കാട്ട് എന്നു ഭാവിച്ച് വിവാഹം തടയാൻ ശ്രമിച്ചു. എഴുത്തുകാരനായ എസ്. കെ. പൊറെറക്കാട്ട് താനാണെന്നു ഭാവിച്ച് എന്റെ പേരിൽ ന്യൂഡൽഹിയിൽ വച്ച് മലയാളികളുടെ സ്വീകരണത്തിൽ പങ്കെടുക്ക

വാൻ അദ്ദേഹം വട്ടംകൂട്ടി. എന്നെ നേരിട്ടറിയാവുന്ന ചിലരും കൂട്ടത്തിൽ ഉണ്ടായിരുന്നതുകൊണ്ടു് അതു് നടന്നില്ല എന്നുമാത്രം. ആ ബ്ലീച്ച് തീർക്കുവാനായി ഈയിടെ ഞാനും നിങ്ങളുടെ മുണ്ടശ്ശേരി മാസ്റ്ററും മററും ഏഷ്യൻ റൈററേഴ്സ് കോൺഫറൻസിൽ സംബന്ധിക്കുവാൻ ചെന്നപ്പോൾ സുപ്രസിദ്ധ കാർട്ടൂണിസ്റ്റ് ശങ്കർ ഗംഭീരമായൊരു വിരുന്നു നല്കി സല്ക്കരിച്ചു. മി. ശങ്കറാണു് ഞങ്ങൾക്കു് ഈ വിവരം നല്കിയതു്. ഇനി തിരഞ്ഞെടുപ്പു കാര്യത്തിലും അദ്ദേഹം കാപട്യം കാണിക്കുന്നു എന്നു് കേട്ടപ്പോൾ എന്നെ നിങ്ങളെ ഒന്നു് കാണിച്ചാൽ കൊള്ളാമെന്നു് എനിക്കു തോന്നി."

12. Paragraph 2 of the petition contains a translation of the passage.. The translation is in the following terms:—

"I am known as S. K. Pottekkat. My full name is Sankaran Kunjuraman Pottekkat. I write occasionally. People read my writings. I am liked by the people. I came to know that Sri Sukumaran Pottekkat who is standing on the Congress ticket here is pretending that he is myself. (i. e S. K. Pottekkat).. This is dishonesty. Sukumaran has a job in the Mathrubhumi Office at Kozhikode. My home is in Kozhikode. We are friends. From the day we got acquainted with each other Sukumaran has been behaving dishonestly. Marriage is important to all people.. He pretended before my wife's people that he is S. K. Pottekkat and tried to prevent our marriage. Pretending that he is the writer S. K. Pottekkat he attempted to get in may name a reception by the Malayalis of New Delhi. Because there were among them some people who know me personally the attempt failed In order to compensate for this, the famous cartoonist Sanker gave me and your Professor Mundasseri a grand feast when we went to Delhi recently to participate in the Conference of Asian Writers. It was Mr. Sankar who gave us this information When I heard that he was resorting to the same treacherous trick in this election also, I wanted to show myself to you".

The similarity in the names—S. K. Pattekkat and Sukumaran Pottekkat - and the identity of occupation are bound to produce a certain element of confusion. If P. W. 2 had merely referred to the chances of confusion we would perhaps have not heard anything more about it.

13. The Tribunal summed up the three incidents mentioned by R. W. 2 in the chronological order as follows:

"(1) The petitioner pretended in the presence of the relations of the bride of R. W. 2 that he was S. K. Pottekkat, the well-known writer, who had proposed to marry that lady. This led to almost an effective rupture of the arrangements that were being made for the marriage

(2) The second incident refers to the petitioner's trip to Delhi where he had gone for an interview for selection of candidates for an appointment for which he was one of the applicants. The statement in the

speech is that in New Delhi he pretended to be R. W. 2, the well known writer in Malayalam, and was at the point of inducing the Malayalee residents of New Delhi to organise a reception for him, when some of the persons who knew R. W. 2 personally discovered the mistake and gave up the idea.

(3) R. W. 2. had heard that even in the constituency the petitioner was guilty of fraudulent personation on hearing which R. W. 2 considered that it was desirable that he should show himself to the people of the constituency and disabuse them of the wrong impression created in their minds".

14. Regarding the first incident the Tribunal said:

"I therefore find that there is sufficient material before this tribunal for holding that the statement contained in the speech delivered by R. W. 2, S. K. Pottekkat, regarding the attempt made by the petitioner to interfere with his arrangement for marriage is not a false statement, but a statement that is true and which was believed to be true by R. W. 2 (Paragraph 18) ;

regarding the second incident:

"I, therefore, find from the evidence and from the probabilities of the case that the statements made in the speech that the petitioner tried to obtain a party in his honour by pretending before the Malayalee residents of New Delhi that he was the well known writer S. K. Pottekkad as reported by Mr. Sanker to R. W. 2 is true and that there is no reason whatsoever for holding that it is a false statement made by R. W. 2, S. K. Pottekkat or a statement not believed by him to be true" (Paragraph 31);

and regarding the third incident:

"There is ample evidence to support the statement made by R. W. 2 in his speech about the deception practised by petitioner (Paragraph 32);

and answered issue No. 3:

"Are the statements in the said speech about the petitioner true? Do they come under the category of statements referred to in section 123(4) of the Representation of the People Act, 1951?"

as follows:

"There is evidence to support the view that the statements in the speech about the petitioner are substantially true and that Sri S. K. Pottekkat believed that they were true. Therefore, they cannot be brought under section 123(4) of the Act."

These conclusion are vigorously challenged by counsel for the appellant who took us through the entire evidence bearing on the subject.

15. Pandit and Mathur analyses section 123(4) of the Representation of the People Act, 1951, in their Law of Elections and Election Petitions in India (Second Edition, page 310) as follows :

"In the definition under section 123(4) of the Act there are two main ingredients i. e. a statement of a particular kind and its publication by certain given individuals. The section may be analysed as follows :—

(1) Statement :—

(a) Any statement of fact

(i) Which is false, and

(ii) which the publisher either believes to be false, or

(iii) which the publisher does not believe to be true;

(b) The statement must be in relation to

(i) the personal character or conduct of any candidate; or

(ii) the candidature, withdrawal or retirement from contest of any candidate;

(c) The statement must be reasonably calculated to prejudice the prospects of such candidate's election.

(2) Publication of the statement may be

(i) a candidate; or

(ii) his agent; or

(iii) any other person".

There can be no doubt that the statement made by R. W. 2 were statements of fact in relation to the personal character and conduct of a candidate.

16. In order to have the election of the respondent declared to be void by the Tribunal on the ground specified in section 100(1) (b) of the Act—the only ground invoked by the petitioner—it must be established that the publication was by the respondent, his election agent or by any other person with his consent or that of his election agent. It is agreed that R. W. 2 was not the election agent of the respondent and that no question of a corrupt practice under section 123 (4) committed by the election agent of the respondent or by any other person with his consent or that of his election agent arises for consideration.

17. Under section 100(1) (d) (ii) of the Representation of the People Act, 1951, the election of a returned candidate should be declared to be void even if the corrupt practice was committed by a person "other than that candidate or his election agent or a person acting with the consent of such candidate or election agent" provided:

(a) the corrupt practice was committed in the interests of the returned candidate; and

(b) the result of the election, in so far as it concerns the returned candidate, has been materially affected by the Commission of the corrupt practice.

A contention based on this provision was raised before the Tribunal. (See issue No. 9 and paragraphs 42 and 43 of the order under appeal). The Tribunal said that there was:

"no evidence to show that the election has been materially affected as a result of the speech of R. W. 2. Shri S. K. Pottekkat"

and negatived the contention. The conclusion reached by the Tribunal is not challenged before us.

18. The only question, therefore, which arises for consideration is whether the respondent should be considered guilty of a corrupt practice as defined in section 123 (4) of the Representation of the People Act, 1951, because of the publication of the report of the speech in Ext. G, the issue of the Navajivan dated the 9th March 1957, In other words:

(a) Is the respondent responsible for the publication? and

(b) If he is, did he believe the statements made by R. W. 2 to be false, or did he not believe them to be true?

19. As already stated the respondent was the editor of the Navajivan on the relevant date, and Ext. G contains a statement to that effect. Section 7 of the Press and Registration of Books Act, 1867, provides for a rebuttable presumption. The relevant portion of that section reads as follows :—

"In any legal proceeding whatever, as well civil as criminal, the production of a copy of the newspaper containing his name printed on it as that of the editor, shall be held, unless the contrary be proved, to be sufficient evidence, as against the person whose name shall be printed on such newspaper that the said person was the editor of every portion of that issue of the newspaper of which a copy is produced".

20. Section 8-A of the Act provides:

"If any person, whose name has appeared as editor on a copy of a newspaper, claims that he was not the editor of the issue on which his name has so appeared, he may, within two weeks of his becoming aware that his name has been so published, appear before a District, Presidency or Sub-Divisional Magistrate and make a declaration that his name was incorrectly published in that issue as that of the editor thereof, and if the Magistrate after making such inquiry or causing such inquiry to be made as he may consider necessary is satisfied that such declaration is true, he shall certify accordingly, and on that certificate being given the provisions of section 7 shall not apply to that person in respect of that issue of the newspaper.

The Magistrate may extend the period allowed by this section in any case where he is satisfied that such person was prevented by sufficient cause from appearing and making the declaration within that period".

As the respondent was the editor of Ext. G, he has naturally not made any declaration under section 8-A.

21. According to counsel for the respondent these proceedings cannot be considered as "civil" or "criminal" proceedings and the presumption under section 7 is not attracted. In paragraph 10 of the reply statement the respondent has stated:

> "A rendering of the speech made by Sri S. K. Pottekkat seems to have been published in the Navajivan of 9-3-57, of which the respondent was the Chief Editor. But at the time, the respondent was fully engaged in his election work and he had no time or leisure to scrutinise all publications in the paper, neither did he do so. The respondent denies that it is with his knowledge that the publication was made".

The further contention is that even if the presumption is available, it stands rebutted, by the evidence adduced by the respondent.

22. We propose to assume, without deciding, that the presumption under section 7 is attracted and that it has not been rebutted. Even then it has still to be established that the respondent believed the statements to be false or did not believe them to be true. The similarity of names—S. K. Pottekkat and Sukumaran Pottekkat—lend probability to the statements made, and there is nothing in the evidence to show that the respondent had any reason to disbelieve R.W. 2, a well known writer in the Malayalam language, a member of the Kerala Sahitya Akadami and a friend of his of many years' standing. The following are passages from the respondent's evidence as R. W. 1:—

> "For a long time I had known Sri S. K. Pottekkat, i. e., from the time he began to be a writer, i. e., more than 10 or 15 years ago. Sri S. K. Pottekkat has written many books. I have read many of them. He is a distinguished short story writer and novelist in Malayalam. I am a member of the Kerala Sahitya Akadami and a member of the executive committee of the same. Sri S. K. Pottekkat has been a member of the Akadami and later he became a member of the executive committee. He did not speak anything false to my knowledge. I was not personally acquainted with the facts spoken to by Sri S. K. Pottekkat but I had heard about them from reliable friends".

The question put to him by some voters of his constituency:

> "some asked me whether Mr. S. K. Pottekkat was going to be my rival in the Manalur Constituency";

and a conversation between Mr. Sankar and R. W. 2 in his presence in New Delhi would also have induced him to believe that the statements were true;

> "Sri S. K. Pottekkat, myself and one or two others were invited by Cartoonist Mr. Sankar to tea. We went there. I found Mr. Sankar was telling Mr. S. K Pottekkat that some time ago there was a suggestion to arrange a party for Sri S,K. Pottekkat, taking

Sri Sukumaran Pottekkat for Sri S. K. Pottekkat. He said that that party was dropped".

23. It has also to be remembered that one would not normally expect a person in the position of R. W. 2 to say anything but the truth about the preliminaries to his own marriage or to conduct a false story to the effect that he narrowly missed becoming the husband of a woman he ultimately married because of tbe machinations of a friend and a colleague in the literary field.

24. In these circumstances we must conclude that the respondent did not believe the statements published in Ext. G. to be false or did not believe them to be untrue and hold that he is not guilty of a corrupt practice coming within the ambit of section 123 (4) of the Representation of the People Act, 1951.

25. In order to attract section 123 (4) the statements made must also be statements "reasonably calculated to prejudice the prospects" of the candidate's election. That the petitioner himself did not consider the statements as anything serious is clear from what he wrote in the issue of the Jayakeralam dated 30-3-1957 (Ext. M). In an earlier issue of that weekly newspaper -in the issue dated 16-3-1957 (Ext. J)—there was a comment on the speech made by R. W. 2 on the 7th March, 1957. The comment was by a writer who styled himself as "ആർ". The heading of the comment was: "പൊറ്റെക്കാടന്മാർ" and the concluding sentence.

"സംഗതി ശരിയാണെങ്കിൽ ഇതൊരു നാണംകെട്ട ഇടപാടാണെന്നു പറയാതിരിക്കാൻ വയ്യ".

The opening paragraph of the reply is in the following terms :—

"ഈ ലക്കം (16-3-57) സംസാരിക്കുന്നവാർത്തകളിൽ പൊറ്റെക്കാടന്മാരുടെ ശല്യത്തെപ്പറ്റി 'ആർ' എഴുതിയ കുറിപ്പു വായിച്ചു. നവജീവനിലും, ദേശാഭിമാനിയിലും വന്ന ഒരു പ്രസംഗറിപ്പോർട്ടിനെ മുൻനിർത്തിയാണ് ആ കുറിപ്പ്. പ്രസ്തുത പത്രങ്ങളിൽ യഥാകാലം ഞാൻ ആ റിപ്പോർട്ട് വായിച്ചിട്ടുണ്ട്. അപ്പോഴൊന്നും അതു മറുപടി അർഹിക്കുന്നതാണെന്നു തോന്നുകയുണ്ടായില്ല. തിരഞ്ഞെടുപ്പു തട്ടിപ്പുകൾ പലതും വെളിക്കിറക്കുന്ന കോളങ്ങളെന്ന നിലയ്ക്ക് അതിനെ അവഗണിച്ചിരിക്കുകയായിരുന്നു—കാലം തിരഞ്ഞെടുപ്പ്. പ്രസിദ്ധപ്പെടുത്തുന്ന പത്രങ്ങളോ പാർട്ടിജിഹ്വകളും. പക്ഷേ ജയകേരളത്തിൽ വന്ന സാഭിപ്രായമായ കുറിപ്പ് അതേപടി അഗണ്യകോടിയിൽ തള്ളാൻ മനസ്സുവരുന്നില്ല—ജയകേരളമായതുകൊണ്ടും ഉദ്ധരിച്ച റിപ്പോർട്ടിനോടൊപ്പം ലേഖകന്റെ സ്വാഭിപ്രായം കൂടി കൊളുത്തിവച്ചിട്ടുള്ളതുകൊണ്ടും".

This certainly is not the way a candidate will write if he considered the statements as anything serious or as something prejudicial to his prospects of success at the election.

26. It follows that the appeal must fail and has to be dismissed. We decide accordingly and in the circumstances of the case, direct the parties to bear their respective costs, both here and before the Tribunal.

(Sd.) G. KUMARA PILLAI, Judge.

7-3-1958. (Sd.) M. S. MENON, Judge.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1958.